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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/299,684	04/26/1999	NINA T. BHATTI	10982229-1	3580
22879 7590 04/11/2008 HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400				
			EXAMINER BIAGINI, CHRISTOPHER D	
			ART UNIT 2142	PAPER NUMBER
			NOTIFICATION DATE 04/11/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

09/299,684

**Applicant(s)**

BHATTI ET AL.

**Examiner**

Christopher Biagini

**Art Unit**

2142

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, filed December 27, 2007, with respect to the rejection(s) of claim(s) 1-12 and 15 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are directed to a system comprising a "content server" and an "adaptive load control system." The instant specification provides evidence that these terms are intended to encompass embodiments that consist entirely of software (see page 16, line 21 to page 17, line 2). Software alone, in the absence of a structurally and functionally interrelated computer-readable medium, is not statutory subject matter. See MPEP 2106.01.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daneels (US Patent No. 6,038,598) in view of Engelschall ("Apache HTTP Server Version 1.3: Module mod\_rewrite"), and further in view of Abbott et al. (US Patent No. 6,314,463, hereinafter "Abbott").

Regarding claim 1, Daneels shows a data service system in a data service network system, comprising:

- a content server (comprising the web server in server system 14) that statically stores a plurality of content files for access by external access requests ("web page sets": see col. 2, lines 34-39), wherein a first of said plurality of content files comprises content stored in a full content format (a set containing large amounts of information and video size) and wherein a second of said plurality of content files comprises corresponding content stored in an adapted content format which is less resource-intensive to serve than the full content format (a set containing smaller files such as still images: see col. 3, lines 26-36); and
- an adaptive load control system (the system comprising state setting device 38, state information database 18, and URL-to-file mapping logic 16) coupled to said content server to pass the access requests to said content server (see Fig. 1), wherein the adaptive load control system modifies an access attempt to access said second of said plurality of content files instead of said first of said plurality

of content files when said content server is in an overload condition such that said content server is maintained at safe load conditions (see col. 2, line 56 to col. 3, line 15 and col. 3, lines 26-36), said adaptive load control system comprising:

- a load monitor (state setting device 38) that monitors the load condition of said content server (see col. 3, lines 19-22 and 26-29).

Daneels further shows that the different content files have different access request addresses (see col. 2, line 58 to col. 3, line 2).

Daneels does not explicitly show:

- that the adaptive load control system modifies the access attempt by modifying an access request address; and
- that the load monitor establishes the load condition of said content server by measuring an amount of time between when the content server receives the external access request and when said content server provides the external access request.

Engelschall shows modifying access request attempts by modifying an access request address (see Summary on p. 1, discussion of RewriteRule directive on p. 11, and discussion of proxy flag on p. 13). In other words, Engelschall describes the ability of a system to intercept requests, rewrite the access request addresses, and pass them along to a content server. It would have been obvious to one of ordinary skill in the art to modify the system of Daneels to modify access request addresses as taught by Engelschall in order to provide for URL redirection that is transparent to the user.

Abbott shows a load monitor that monitors the load condition of a content server without requiring monitoring of the network, said load monitor establishing the load condition of said content server by measuring an amount of time between when a content server receives the external access request and when said content server provides the external access request (see col. 2, line 54 to col. 3, line 31 and col. 10, line 65 to col. 11, col. 3). It would have been obvious to one of ordinary skill in the art to modify the invention of Mogul with the load monitoring system taught by Abbott in order to measure server response time without the measurement being skewed by varying network performance (see Abbott, col. 1, line 66 to col. 2, line 5).

Regarding claim 2, the combination of Daneels, Engelschall, and Abbott further shows wherein said the adaptive load control system modifies the access request address to access said first of said plurality of content files to access the content in the full content format instead of in the adapted format when said content server is not in the overload condition (comprising a server load of less than 50%: see Daneels, col. 3, lines 6-36).

Regarding claim 3, the combination of Daneels, Engelschall, and Abbott further shows wherein the adaptive load control system further comprises a content adapter (URL to file mapping logic 16) coupled to said load monitor and said content server to modify the access request address (see Engelschall, p. 13) to access the corresponding said second of said plurality of content files to access content in the adapted content format instead of in the full content format when the load monitor indicates that said content server is in the overload condition (see Daneels, col. 3, lines 26 to 36 and 62-67).

Regarding claim 4, the combination of Daneels, Engelschall, and Abbott further shows wherein said adaptive load control system further comprises an adaption controller coupled to said load monitor and said content adapter to cause said content adapter to modify the access request address (see Engelschall, p. 13) to access said second of said plurality of content files to access content in the adapted content format instead of in the full content format when said load monitor indicates that said content server is in the overload condition (see Daneels, col. 3, lines 26 to 36).

Regarding claim 5, the combination of Daneels, Engelschall, and Abbott further shows wherein said adaption controller determines if said content server is in the overload condition by comparing the load information received by said load monitor against a predetermined desired load value of said content server (the predetermined load value comprising a value of 50%: see Daneels, col. 3, lines 10-12 and 62-67).

Regarding claim 6, the combination of Daneels, Engelschall, and Abbott further shows wherein said content adapter modifies the access request address to access said first of said plurality of content files to access content in the full content format instead of in the adapted content format when said load monitor indicates that said content server is not in the overload condition (comprising a server load of less than 50%: see Daneels, col. 3, lines 10-12).

Regarding claim 7, the combination of Daneels, Engelschall, and Abbott further shows wherein said content adapter modifies the access request address by modifying a URL (Universal Resource Locator) of the access request address (see Daneels, col. 3, lines 10-12 and Engelschall, p. 1).

Regarding claim 8, the combination of Daneels, Engelschall, and Abbott further shows wherein for each of said plurality of content files, said content server includes a service directory that directs the modified access request address to access said first of said plurality of content files and said second of said plurality of content files (comprising the component which stores associates between page sets and state variables: see Daneels, col. 3, lines 10-12 and col. 4, lines 23-34).

Claim 9 is a method claim corresponding to claim 1 and is rejected for the same reasons as given above.

Regarding claim 10, the combination of Daneels, Engelschall, and Abbott further shows modifying the access request address to access said first of said plurality of content files statically stored in said content server instead of said second of said plurality of content files statically stored in said content server format when said content server is determined not to be in the overload condition (comprising a server load of less than 50%: see Daneels, col. 3, lines 6-36).



Regarding claim 11, the combination of Daneels, Engelschall, and Abbott further shows wherein the determining load condition further comprises:

- obtaining the actual load condition of said content server using a load monitor (comprising the state setting device setting a state variable, where server load is a state variable: see Daneels, col. 3, lines 19-22 and col. 4, lines 35-37) ; and
- comparing the actual load condition with a predetermined desired load condition to determine if said content server is in the overload condition (see Daneels, col. 3, lines 62-67).

Regarding claim 12, the combination of Daneels, Engelschall, and Abbott further shows wherein the modifying the access request address is performed by modifying a URL of the access request address (see Engelschall, p. 1).

Regarding claim 15, the combination of Daneels, Engelschall, and Abbott further shows wherein the determining load condition of said content server is performed within said content server (see Daneels, col. 3, lines 26-29).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Biagini whose telephone number is (571)272-9743. The examiner can normally be reached on weekdays from 8:30 AM to 5:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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